IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

WP(C).No. 6667 of 2005(R)

PETITIONER:

ILYAS T., LECTURER, PHYSICAL EDUCATION
DEPARTMENT OF PHYSICAL EDUCATION, SIR SYED COLLEGE
TALIPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNEMNT OF HIGHER
EDUCATION, THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOZHIKODE.

4. THE PRINCIPAL SIR SYED COLLEGE,
TALIPARAMBA.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF ORDER BEARING REF.NO.61/97-40 DTD. 30-3-97**
EXT.P2	**TRUE COPY OF THE ORDER ISSUED BY CALICUT UNIVERSITY BEARING NO.G.A-A4/16530/70 DTD. 09-07-73.**
EXT.P3	**TRUE COPY OF LETTER NO.E3/4596/03 DTD. 3-11-03**
EXT.P4	**TRUE COPY OF G.O.(NS)NO.114/2002/H.EDN. DTD. 5-9-02**
EXT.P5	**TRUE COPY OF ORDER BEARING NO. D2/27647/2003/COLL.EDN. DATED 17-11-04**
EXT.P6	**TRUE COPY OF ORDER BEARING NO.ESTT/D2-40389/2004/COLL.EDN. DATED 5-2-05**
EXT.P6(A)	**TRUE COPY OF COUNTER AFFIDAVIT FILED IN W.P.(C)NO.28692/04**
EXT.P7	**TRUE COPY OF JUDGMENT PASSED IN O.P.2797/03 DTD. 11-02-03**

RESPONDENT'S EXHIBITS

EXT.R1(A)	**TRUE COPY OF THE ORDER DATED 10-11-99**
EXT.R1(B)	**TRUE COPY OF THE G.O.(MS)NO.171/97/H.EDN. DATED 8-12-97**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.6667 OF 2005

Dated this the 2nd day of January,2007.

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as Junior Lecturer in the department of Physical Education in the fourth respondent's college vide Ext.P1 order dated 30-03-97. Pre-Degree was delinked from the college thereafter. Petitioner was not deployed as there is no post in the Higher Secondary service. There is only one regular post in the said department. The strength of students was beyond 1000. There can be two posts of lecturers is the case of the petitioner. Ext.P2 is the order of the University in this regard. Petitioner continued to work after pre-degree was delinked. From 2001 onwards salary was not paid. He filed representations. It was considered and it is found that two posts are permissible. Ext.P3 is the communication by the third respondent to the first respondent. Ext.P4 is the order dated 05-09-02. In which it is inter-alia ordered as follows:

"(i) Junior Lecturers (Pre-degree) now working in the college should be retained in

the college where there are vacancies of teachers as found by the Director of Collegiate Education.

(ii) Such teachers should acquire the prescribed qualification within a period of two years and they should be given preference in appointment as Lecturers in future vacancies in the Colleges.

2. According to the petitioner, as per Ext.P4 he should be retained as there is vacancy. Ext.P5 is the order relied on by the petitioner. Petitioner has preferred W.P.(C)No.28692/04. Ext.P6 is the order passed pursuant to the interim order passed in the said writ petition. In Ext.P6, the Director of Collegiate Education found that the post of Junior Lecturer is not in existence consequent on delinking of Pre-degree from colleges and petitioner is not qualified for the post of Lecturer as per UGC norms. As petitioner did not possess U.G.C. qualification for the post of Lecturer, he cannot be accommodated in one of the two posts available in the college in question. It is further found that he is not eligible for the emoluments attached to the post of lecturer.

3. Ext.P7 is the judgment of this court relied on by the

petitioner. Therein it is inter-alia directed that teachers who are deployed should be allowed to retain their lien in the college so that as and when vacancies arise they will be able to go back and those who are deployed and who have qualification should be allowed to go back to their respective colleges as and when vacancies arise in such colleges.

4. The writ petition was originally allowed. But on a review filed by the State, the judgment was recalled. Learned counsel for the petitioner Adv.Sri.M.V.Amaresan took me through Exts.P4 and P5 and would contend that petitioner is also entitled to the same treatment and having regard to the number of students petitioner can be accommodated in the college. He further points out that at present there is only one lecturer as other lecturer has retired.

5. Detailed counter affidavit is being filed in the matter.

6. I heard learned Government Pleader also. He would contend that going by Ext.P4 the person should acquire the prescribed qualification within a period of two years and therefore in the facts and circumstances of this case petitioner has not acquired the prescribed qualification namely NET on or before 04-09-04.

7. In fact, there is no dispute with regard to the

entitlement of the petitioner for salary from October 2001 till the date of Ext.P6 as Junior Lecturer. It is clear that petitioner not having acquired the qualification within a period of two years cannot be directed to be allowed to continue in the college and he cannot resist deployment for which in fact orders have already been issued. It is submitted that petitioner is in fact even now continuing. In such circumstances the writ petition is disposed of as follows:

There will be a direction to the fourth respondent to prepare and present the salary bill of the petitioner as Junior Lecturer for the period from October 2001 till 05-02-05, unless it is already been done, within a period of two weeks from the date of receipt of a copy of this judgment. Third respondent shall counter sign the said salary bill within a period of one month from the date of receipt of the same and the amounts due thereunder shall be paid to the petitioner without any further delay.

8. No doubt learned counsel for the petitioner would contend that petitioner is in fact continuing on the strength of the judgment in this writ petition and it came to be reviewed only on November 2006 and in fact there were two posts against which petitioner could be accommodated and he may be sanctioned salary during the period he worked. I feel that it is for the

petitioner to file a representation before the first respondent for claim for salary as Junior Lecturer for the period beyond 05-02-05. If such a representation is filed, first respondent will consider and pass orders on the same in accordance with law within a period of six weeks form the date of receipt of representation. The prayer of the petitioner to be allowed to continue in the college cannot be accepted in view of the fact that petitioner has not acquired the prescribed qualification. Hence that prayer is rejected.

Writ petition is disposed of as above.

K.M.JOSEPH.
JUDGE.

sv.